

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

PPG INDUSTRIES INC.,

Plaintiff-Counterclaim
Defendant,

v.

UNITED STATES OF AMERICA,

Defendants-
Counterclaimants

Civil Action No. 12-3526 (MCA)(MAH)

FIFTH AMENDED PRETRIAL
SCHEDULING ORDER

THIS MATTER having come before the Court by way of the parties' joint submission in accordance with the Court's direction at the January 7, 2016 Status Conference, upon consideration of the parties' joint letter submitted February 22, 2016, and for good cause shown;

IT IS ON THIS 14th day of MARCH, 2016,

and the Court having held a telephone status conference with the parties on March 9, 2016;

ORDERED THAT:

1. All provisions and deadlines that have expired, and are not modified by this Fifth Amended Pretrial Scheduling Order, shall remain in full force and are not affected by this Order. *ALL DEADLINES HEREIN ARE FIRM AND WILL NOT BE AMENDED ABSENT UNFORESEEN AND EXIGENT CIRCUMSTANCES.*

I. FACT DISCOVERY

2. Document production in this matter remains in progress and the parties jointly acknowledge the need to extend the fact and expert discovery deadlines. All document production by the parties, except for: (1) response action and cost documents created after November, 2015; and (2) requests for production arising during depositions or meet and confer discussions hereafter, shall be completed by March 14, 2016. This deadline does not foreclose PPG from producing additional, currently "classified" documents which the parties are unable to obtain from the United States National Archives and Records Administration or from Governmental Agencies which have not, to date, been made available.

3. By April 1, 2016, the parties will serve any amendments to their written discovery responses as may be warranted by document productions or other discovery completed by the date of this Order. This interim deadline, however, shall have no effect on the parties' continuing duty, under the Federal Rules of Civil Procedure and other applicable authorities, to amend their written discovery responses and Fed. R. Civ. P. 26(a)(1) Initial Disclosures, as may be necessary, during the pendency of this action.

4. Fact discovery is to remain open until July 8, 2016. No fact discovery is to be issued or engaged in beyond that date, except upon application and for good cause shown.

- a. By agreement of the parties, PPG shall serve on Defendant the redacted version of the other insurance agreements by MARCH 21, 2016.
- b. ANY AND ALL REMAINING DISPUTES RE. WRITTEN DISCOVERY MUST BE BROUGHT TO THE COURT'S ATTENTION BY JOINT LETTER BY APRIL 29, 2016. THE COURT WILL NOT CONSIDER WRITTEN DISCOVERY DISPUTES PRESENTED AFTER THIS DEADLINE.

5. Depositions of fact witnesses and individuals who will give lay opinion testimony based on particular competence in an area are to be limited to **twenty (20) per side** and shall be completed no later than the Fact Discovery End Date.

6. No objections to questions posed at depositions shall be made other than as to lack of foundation, form or privilege. See Fed. R. Civ. P. 32(d)(3)(A). No instruction not to answer shall be given unless a privilege is implicated.

7. All depositions pursuant to Fed. R. Civ. P. 30(b)(6) will be completed by the Fact Discovery End Date.

8. Counsel shall confer in a good faith attempt to informally resolve any and all discovery disputes **before** seeking the Court's intervention. See L. Civ. R. 37.1(a)(1); see also L. Civ. R. 16.1(f)(1). Should such informal effort fail to resolve the dispute, the matter shall be brought to the Court's attention via a joint letter that sets forth: (a) the request; (b) the response; (c) efforts to resolve the dispute; (d) why the complaining party believes the information is relevant and why the responding party's response continues to be deficient; and (e) why the responding party believes the response is sufficient. No further submissions regarding the dispute may be submitted without leave of Court. If necessary, the Court will thereafter schedule a telephone conference to resolve the dispute.

No discovery motion or motion for sanctions for failure to provide discovery shall be filed before utilizing the procedures set forth in these paragraphs without prior leave of Court.

II. EXPERT DISCOVERY

9. The parties shall serve any reports from the experts who have been designated or may be substituted for previously designated witness(es) pursuant to Paragraph 17 in the First Amended Scheduling Order (ECF No. 42) on or before **October 7, 2016**. Any such report is to be in the form and content as required by Fed. R. Civ. P. 26(a)(2)(B).

10. Reports from any rebuttal or supplemental experts who have been designated or may be substituted for previously designated witness(es) pursuant to Paragraph 18 in the First Amended Scheduling Order (ECF No. 42) on or before **January 6, 2017**. Any such report is to be in the form and content as required by Fed. R. Civ. P. 26(a)(2)(B).

11. Expert depositions shall begin no earlier than **April 4, 2017**, and shall be completed on or before **July 11, 2017**.

12. No expert shall testify at trial as to any opinions or base those opinions on facts not substantially disclosed in his report.

III. FUTURE CONFERENCES

13. The next telephone status conference in this matter will occur on MAY 12, 2016. Plaintiff will kindly initiate the telephone call.

AT 10:30 A.M.
14. The Court may from time to time schedule conferences as may be required, either *sua sponte* or at the request of a party.

15. Counsel should be prepared to discuss settlement at every conference with the Court. The senior attorney in charge of the case must attend all settlement conferences and client(s) with full settlement authority must either attend or be immediately available by telephone. In cases involving insurance companies and other corporate or business entities, it is expected that the executive who will make the final decision on the settlement will be the person available for the conference.

16. A copy of every pleading, document or written communication with the Court shall be served on all other parties to the action. Any such communication which does not recite or contain a certification of such service may be disregarded by the Court.

IV. MOTIONS

17. No motions are to be filed without prior written permission from this Court. All dispositive motions must first be subject to a dispositive motion pre-hearing. Discovery must be completed prior to the filing of a dispositive motion. These prerequisites must be met before any motions are filed and the motions will be returned if not met. All calendar or dispositive motions, if permitted, shall comply with Local Civil Rules 7.1(b) and 56.1.

18. Dispositive motions, if any, are to be filed on August 30, 2017.

VII. FINAL PRETRIAL CONFERENCE

19. A final pretrial conference shall be conducted pursuant to Civil Rule 16(d) on **[TO BE SET]**.

20. All counsel are directed to assemble at the office of plaintiff's counsel not later than **ten (10) days** before the pretrial conference to prepare the Final Pretrial Order in the form and content required by the Court. Plaintiff's counsel shall prepare the Pretrial Order and shall submit it to all other counsel for approval.

21. The original of the Final Pretrial Order shall be delivered to Chambers not later than **forty-eight (48) hours** before the pretrial conference. All counsel are responsible for the timely submission of the Final Pretrial Order.

**22. FAILURE TO FOLLOW THIS ORDER WILL RESULT IN SANCTIONS
PURSUANT TO Fed. R. Civ. P. 16(f) and 37.**



Hon. Michael A. Hammer
United States Magistrate Judge

Original: Clerk of the Court
cc: Hon. Madeline C. Arleo, U.S.D.J.
All Parties
File

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GENERAL ELECTRIC COMPANY,

Plaintiff,

v.

LIG INSURANCE CO., LTD.,

Defendant.

No. 2:14-cv-07380-MCA-MAH

DISCOVERY CONFIDENTIALITY ORDER

The Court having considered the Certification of HAL BOGARD, ESQ.; and
It appearing that discovery in the above-captioned action is likely to involve

the disclosure of confidential information, it is ORDERED as follows:

1. Any party to this litigation and any third-party shall have the right to designate as "Confidential" and subject to this Order any information, document, or thing, or portion of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, or (b) that contains private or confidential personal information, or (c) that contains information received in confidence from third parties, or (d) which the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil

Procedure and Local Civil Rule 5.3. Any party to this litigation or any third party covered by this Order, who produces or discloses any Confidential material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER” (hereinafter “Confidential”).

2. Any party to this litigation and any third-party shall have the right to designate as “Attorneys’ Eyes Only” and subject to this Order any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party. Any party to this litigation or any third party who is covered by this Order, who produces or discloses any Attorneys’ Eyes Only material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “ATTORNEYS’ EYES ONLY” or “ATTORNEYS’ EYES ONLY – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER” (hereinafter “Attorneys’ Eyes Only”).

3. All Confidential material shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the receiving party to anyone other than those set forth in Paragraph 4, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court. It is, however, understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of Confidential material, provided that such advice and opinions shall not reveal the content of such Confidential material except by prior written agreement of counsel for the parties, or by Order of the Court.

4. Confidential material and the contents of Confidential material may be disclosed only to the following individuals under the following conditions:

a. Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;

b. Outside experts or consultants retained by outside counsel for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;

c. Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;

d. The Court and court personnel;

e. Any deponent may be shown or examined on any information, document or thing designated Confidential if it appears that the witness authored or received a copy of it, was involved in the subject matter described therein or is employed by the party who produced the information, document or thing, or if the producing party consents to such disclosure;

f. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and

g. The parties. In the case of parties that are corporations or other business entities, “party” shall mean individuals who are required to participate in decisions with reference to this lawsuit.

5. Confidential material shall be used only by individuals permitted access to it under Paragraph 4. Confidential material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside counsel for the party asserting confidentiality waives the claim of confidentiality, or (b) the Court orders such disclosure.

6. With respect to any depositions that involve a disclosure of Confidential material of a party to this action, such party shall have until thirty (30) days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual other than the individuals described in Paragraph 4(a), (b), (c), (d) and (f) above and the deponent during these thirty (30) days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 4(a), (b), (c), (d) and (f) above during said thirty (30) days. Upon being informed that certain portions of a deposition are to be designated as Confidential, all parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with Paragraphs 3 and 4.

7. Material produced and marked as Attorneys' Eyes Only may be disclosed only to persons described in Paragraphs 4(a)-(f), except as otherwise provided in this Order or as Ordered by the Court.

8. If counsel for a party receiving documents or information designated as Confidential or Attorneys' Eyes Only hereunder objects to such designation of any or all of such items, the following procedure shall apply:

(a) Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within 14 days, and shall state with particularity the grounds for asserting that the document or information is Confidential or Attorneys' Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or nonparty makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

(b) If a dispute as to a Confidential or Attorneys' Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent

of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1(a)(1), before filing a formal motion for an order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

9. All requests to seal documents filed with the Court shall comply with Local Civil Rule 5.3.

10. If the need arises during trial or at any Hearing before the Court for any party to disclose Confidential or Attorneys' Eyes Only information, it may do so only after giving notice to the producing party and as directed by the Court.

11. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information, document or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom the material was disclosed that the material should have been designated Confidential

within a reasonable time after disclosure. Such notice shall constitute a designation of the information, document or thing as Confidential under this Discovery Confidentiality Order.

12. When the inadvertent or mistaken disclosure of any information, document or thing protected by privilege or work-product immunity is discovered by the producing party and brought to the attention of the receiving party, the receiving party's treatment of such material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of such information, document or thing shall not by itself constitute a waiver by the producing party of any claims of privilege or work-product immunity. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure.

13. No information that is in the public domain or which is already known by the receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential material under this Discovery Confidentiality Order.

14. This Discovery Confidentiality Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Discovery Confidentiality Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

15. This Discovery Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

16. Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall be under an obligation to either: (a) destroy; or (b) assemble and to return to the originating source all originals and unmarked copies of documents and things containing Confidential material and to destroy, should such source so request, all copies of Confidential material that contain and/or constitute attorney work product as well as excerpts, summaries and digests revealing Confidential material; provided, however, that counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Discovery Confidentiality Order. To the extent a party requests the return of Confidential material from the Court after the final conclusion of the litigation, including the

exhaustion of all appeals therefrom and all related proceedings, the party shall file
a motion seeking such relief.

IT IS SO ORDERED.

Dated: 3/14/2016



Hon. Michael A. Hammer, U.S.M.J.

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GENERAL ELECTRIC COMPANY,

Plaintiff,

v.

LIG INSURANCE CO., LTD.,

Defendant.

No. 2:14-cv-07380-MCA-MAH

**AGREEMENT TO BE BOUND
BY DISCOVERY CONFIDENTIALITY ORDER**

I, _____, being duly sworn, state that:

1. My address is _____.

2. My present employer is _____ and the
address of my present employment is _____.

3. My present occupation or job description is _____.

4. I have carefully read and understood the provisions of the Discovery
Confidentiality Order in this case signed by the Court, and I will comply with all
provisions of the Discovery Confidentiality Order.

5. I will hold in confidence and not disclose to anyone not qualified under the Discovery Confidentiality Order any Confidential Material or any words, summaries, abstracts, or indices of Confidential Information disclosed to me.

6. I will limit use of Confidential Material disclosed to me solely for purpose of this action.

7. No later than the final conclusion of the case, I will return all Confidential Material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____